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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Case No. 2:21-cr-00111-WBS
	)	
<i>Plaintiff,</i>	)	<b>MOTION <i>IN LIMINE</i> #4 (TO EXCLUDE</b>
	)	<b>EVIDENCE REGARDING QUALITY OF</b>
vs.	)	<b>EMERGENCY PROCEDURES TRAINING)</b>
	)	
ROBERT ALLEN POOLEY	)	Date: April 29, 2024
	)	Time: 9:00 A.M.
	)	Judge: Hon. William B. Shubb
<i>Defendant.</i>	)	
_____	)	

**I. MOTION**

Robert Allen Pooley moves *in limine* to exclude evidence of the quality of emergency procedures training he provided in his Tandem Instructor Course. Such evidence is irrelevant and otherwise inadmissible under Fed. R. Evid. 401 and 403.

**II. FACTUAL BACKGROUND**

The indictment alleges generally that from around May through August, 2016, Mr. Pooley defrauded a group of tandem skydiving course candidates by conducting a Tandem Instructor Course when he did not have the proper credentials to do so. The object of the fraud was to obtain funds from course candidates seeking their tandem instructor ratings from the relevant authorities. *See* Dkt. 1 at ¶ 28.

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### III. ARGUMENT

#### A. Evidence Regarding the Quality of Emergency Procedures Training is Irrelevant and Inadmissible Under Fed. R. Evid. 401

The evidence regarding the quality of the emergency procedures training in Mr. Pooley's Tandem Instructor Course has no bearing on whether Mr. Pooley committed wire fraud or aggravated identity theft. Whether Mr. Pooley provided the most, or least, comprehensive emergency procedures training in his course would not affect his guilt under either statute. Indeed, the indictment does not allege that Mr. Pooley made misrepresentations or omissions regarding the emergency procedures training he would provide in the Tandem Instructor Course. Rather, Mr. Pooley is alleged to have made omissions about the fact that he held the proper credentials to conduct the course. Moreover, none of the alleged victims state that they sought out Mr. Pooley's course because they were seeking certain emergency procedures training, only that they were seeking their Tandem Instructor Ratings to work as Tandem Instructors and make additional income. *See* Dkt. 50, Ex. 8; ; Dkt. 50, Ex. 9; Dkt. 50, Ex. 18; Dkt. 50, Ex. 19; Dkt. 50, Ex. 20 (indicating that they sought out the Tandem Instructor Course in order to obtain their Tandem Instructor Ratings).

Because evidence regarding the quality of the emergency procedures training Mr. Pooley provided in the Tandem Instructor Course is irrelevant, it is inadmissible under Fed. R. Evid. 401.

#### B. Even if Evidence Regarding the Quality of Emergency Procedures Training Has Some Probative Value, It Should be Excluded Under Fed. R. Evid. 403

As explained above, evidence regarding the quality of emergency procedures training has minimal, if any, probative value to the government's case against Mr. Pooley. Any probative value is substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, and wasting time.

Presenting evidence regarding the quality of Mr. Pooley's emergency procedures training creates a danger of unfair prejudice to Mr. Pooley. Skydiving is a dangerous sport in which individuals' lives are at risk. Any suggestion that Mr. Pooley's emergency procedures training

1 was lacking would tempt the jury to declare guilt on grounds other than the proof needed to  
2 establish Mr. Pooley's guilt for wire fraud and aggravated identity theft. That is, it would  
3 generate outrage or disdain towards Mr. Pooley, while also garnering sympathy for the course  
4 candidates and others affected by the quality of his training, for reasons not relevant to the  
5 charges. *See United States v. Copple*, 24 F.3d 535, 546 (3d Cir. 1994) (excluding evidence of  
6 impact of losses caused by fraudulent scheme as unfairly prejudicial where it created significant  
7 risk that jury would convict defendant as a way of compensating victims without regard to  
8 evidence of defendant's guilt).

9 In addition, presenting evidence regarding the quality of the training creates the danger of  
10 confusing the issues, misleading the jury, undue delay, and wasting time. The presentation of  
11 such evidence would require the defense to rebut any claims that the emergency procedures  
12 training provided by Mr. Pooley was inadequate in some way. This evidence would include  
13 separate lines of questioning and additional defense witnesses regarding the content of Mr.  
14 Pooley's emergency procedures training, the standard for which emergency procedures should be  
15 taught and how thoroughly emergency procedures of various kinds should be drilled with  
16 students, as well as whether a spectrum of acceptable emergency procedure training exists, and  
17 whether the training by Mr. Pooley fell on this spectrum. Such a technical presentation would  
18 require expert witnesses called only to opine about emergency procedures – which in turn have  
19 nothing to do with the charges in this case. To the extent the government seeks to ask any lay  
20 witnesses about the applicable standards for emergency procedure training, that line of inquiry  
21 would be both irrelevant and improper expert testimony by a non-expert. *See* FED. R. EVID. 701  
22 and 702 (prohibiting lay opinion testimony on matters based on specialized knowledge and  
23 setting out requirements for expert witness testimony).

24 The time spent focusing on the emergency procedures training and any training criteria  
25 diverts the jury's attention from the evidence relevant to whether Mr. Pooley defrauded the  
26 course candidates, thereby confusing the issues, misleading the jury, creating undue delay, and  
27 wasting time. *See e.g., United States v. Singh*, 995 F.3d 1069, 1081 (9th Cir. 2021) (affirming  
28 limitation of cross-examination of witness's involvement in murder-for-hire plot, in part, under

1 Fed. R. Evid 403 on grounds that a mini-trial on a collateral issue would confuse the issues and  
2 waste time); *United States v. Elysee*, 993 F.3d 1309, 1344–45 (11th Cir. 2021) (excluding  
3 evidence under Rule 403 where its admission would result in lengthy subsidiary trial).

4 As a result, to the extent evidence regarding the quality of emergency procedures training  
5 has any probative value, that value is substantially outweighed by the danger of unfair prejudice,  
6 confusing the issues, misleading the jury, undue delay, and wasting time, and must be excluded  
7 under Fed. R. Evid. 403.

#### 8 IV. CONCLUSION

9 For the reasons stated above, the Court should exclude all evidence regarding the quality  
10 of the emergency procedures training provided to course candidates by Mr. Pooley, as irrelevant  
11 under Fed. R. Evid. 401 or otherwise excludable under Fed. R. Evid. 403.

12  
13 Dated: April 1, 2024

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14  
15 /s/ Meghan McLoughlin  
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